

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 10 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ALVARO CHAVEZ-ACEVEDO,

Petitioner,

v.

ALBERTO R. GONZALES, ** Attorney
General,

Respondent.

No. 03-74623

Agency No. A73-922-981

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted on November 16, 2005
Pasadena, California

Before: HUG and WARDLAW, Circuit Judges, and SINGLETON, ***
District Judge.

Alvaro Chavez-Acevedo, a native and citizen of Mexico, petitions for review
of a Board of Immigration (“BIA”) decision denying his motion requesting that the

* This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney
General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The Honorable James K. Singleton, United States District Judge for the District of
Alaska, sitting by designation.

Board *sua sponte* reopen his final order of deportatation. We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review petitioner's contention that the BIA should have exercised its *sua sponte* power to reopen his case. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). We also lack jurisdiction to consider whether Chavez-Acevedo was properly provided written and oral notice of the consequences of failing to voluntarily depart, because he did not exhaust these issues before the BIA and no exception to the exhaustion requirement is warranted. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). To the extent we do have jurisdiction, it is conferred by former 8 U.S.C. § 1105a and now, § 1252. Chavez-Acevedo contends that, pursuant to *Alcaraz v. INS*, 384 F.3d 1150 (9th Cir. 2004), his case should be remanded to the BIA to consider repapering relief. Repapering relief is limited to aliens who are ineligible for suspension of deportation solely based upon the stop-time rule. *See id.* at 1152-53, 1155. The BIA found that Chavez-Acevedo failed to demonstrate continuous physical presence and failed to demonstrate extreme hardship to himself or a qualifying relative; therefore, Chavez-Acevedo's ineligibility was not solely because of the stop-time rule.

DISMISSED in part, DENIED in part.